At the 2017 Annual Meeting of the House of Delegates (HOD), the HOD adopted Policy D-385.957, “Certified Translation and Interpreter Services,” which calls on our American Medical Association (AMA) to “work to relieve the burden of the costs associated with the translation services implemented under Section 1557 of the Affordable Care Act (ACA)” and “advocate for legislative and/or regulatory changes to require that payers including Medicaid programs and Medicaid managed care plans cover interpreter services and directly pay interpreters for such services.” The policy also requires a progress report at the 2017 Interim Meeting of the AMA HOD. This report serves to satisfy that aspect of the resolution as well as provide a brief overview of the language access provisions of Section 1557.

BACKGROUND ON SECTION 1557

The U.S. Department of Health & Human Services (HHS) Office of Civil Rights (OCR) issued a final rule implementing Section 1557 of the ACA in May 2016, which became effective in July 2016. Section 1557 makes it unlawful for any health care provider who receives funding from the federal government to refuse to treat an individual—or to otherwise discriminate against the individual—based on race, color, national origin, sex, age, or disability. It builds upon longstanding nondiscrimination laws and provides some new civil rights protections. As such, many of the rule’s provisions are familiar to physicians, while others may require physicians to implement new policies and procedures. The rule applies to physicians and other entities receiving federal financial assistance from HHS; however, it does not apply to physicians who participate only in Medicare Part B.

Under Section 1557, a covered physician must take reasonable steps to provide meaningful access to each individual with limited English proficiency (LEP) eligible to be served or likely to be encountered in their practice. Covered physicians must provide language assistance services free of charge, in an accurate and timely manner, and must protect the privacy and independence of the individual with LEP. Required language assistance services include offering a qualified interpreter to an individual with LEP for oral interpretation and a qualified translator when translating written content in paper or electronic form. Specifically, covered physicians may not:

- Require an individual with LEP to provide his or her own interpreter;
- Rely on an adult accompanying an individual with LEP to interpret, except:
  - In an emergency situation involving an imminent threat to the safety or welfare of an individual or the public where there is no qualified interpreter for the individual with LEP immediately available; or
  - Where the individual with LEP specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate;
• Rely on a minor child to interpret or facilitate communication, except:
  • In an emergency involving an imminent threat to the safety or welfare of an individual or
    the public where there is no qualified interpreter for the individual with LEP immediately
    available;
• Rely on unqualified staff members to communicate with individuals with LEP; or
• Utilize poor-quality video interpreting services to provide language assistance services.

FEDERAL ADVOCACY EFFORTS

The AMA has taken a number of steps to educate physicians about Section 1557’s language
translation and interpretation requirements, including the development of a fact sheet posted on the
AMA’s website and a presentation by OCR leadership for members of the Federation. The AMA
has maintained a regular dialogue with OCR to relay that physicians often struggle with the costs
of language assistance services and asked for strategies we could provide to physicians to address
this concern. Based on OCR’s responses, we incorporated some cost-sharing strategies into our
Section 1557 fact sheet—for example, a group of covered physicians could contract with a
telephonic translation service and pay for the services on a pro-rated basis, and covered physicians
may try to negotiate with translation service providers whether the provider must pay a charge in
the event that the patient is late or does not show up for his or her appointment.

Additionally, AMA members have reported to the AMA that individuals with LEP often bring
trusted adults with them to an appointment to facilitate communication. However, as noted above,
Section 1557 regulations state that a physician may rely on an adult accompanying an individual
with LEP to interpret or facilitate communication only if reliance on that adult for such assistance
is “appropriate under the circumstances.” This standard remains unclear to physicians, causing
them to take on the additional burden and expense of interpreters out of an abundance of caution
when it may not be always necessary to do so. Accordingly, the AMA has spoken with OCR in
attempt to clarify the circumstances in which a physician may rely on an adult accompanying a
patient to interpret or facilitate communication. For example, when a physician sees an adult male
patient presenting with flu-like symptoms, who is accompanied by his brother, and the patient
requests that his brother translate, a physician may find this request appropriate under the
circumstances. Conversely, if a female patient presenting with a broken arm is accompanied by her
husband, the physician may have concerns about domestic abuse. In this case, it may be
inappropriate to rely on the husband to provide accurate interpretation services. The AMA intends
to draft a suggested “Frequently Asked Question” (FAQ) addressing this matter for OCR to post on
its website as a resource for physicians. While OCR cautioned that such a posting may not be
possible, the AMA will nevertheless urge OCR to issue guidance on this topic in light of the Trump
Administration’s stated goals of physician burden reduction and regulatory relief.

Finally, in its comments on the proposed 2018 Medicare Physician Fee Schedule (PFS) and
Medicare Hospital Inpatient Prospective Payment Systems (IPPS) rules, the AMA included
information about the burden of providing language assistance services absent reimbursement for
such services. The AMA requested that the Centers for Medicare & Medicaid Services (CMS)
work with OCR to clarify the circumstances under which an adult accompanying an individual
with LEP may interpret or facilitate communication. The AMA submitted the same language to the
U.S. House of Representatives Committee on Ways and Means in response to its call for regulatory
and legislative relief requests, and to senior staff in the HHS Secretary’s office and the White
House. The AMA will continue to pursue opportunities to advance this issue, including cost
burdens on physicians, both on Capitol Hill and within the administration.
OUTREACH TO STATES AND SPECIALTIES

From a state and specialty perspective, the AMA has recently reached out to the Federation of Medicine to determine which, if any, state and specialty societies are interested in working on this issue from a state regulatory perspective. Indiana, Vermont, the American Academy of Otolaryngology–Head and Neck Survey, and the American Academy of Orthopaedic Surgeons all expressed interest. The AMA convened a call with the interested groups to discuss the scope of the problem, the opportunities at both the federal and state levels, and potential resources and collaborations. While some groups (e.g., Indiana) have had success in mandating coverage for interpreters under their Medicaid managed care program, all groups agreed that broader coverage was an uphill battle and not a top priority for them this year. It was determined that states would collaborate with the AMA and specialty societies when an opportunity to advance the issue at the state level arose, and model contract language from successful Medicaid Managed Care coverage efforts was circulated along with additional AMA resources. The groups were also appreciative, and interested in supporting, the AMA’s related request to CMS in its Medicare PFS and IPPS comments.

CONCLUSION

The AMA will continue to identify opportunities to work with Congress and the administration to implement Policy D-385.957, “Certified Translation and Interpreter Services.” The AMA will urge OCR to issue guidance on the ways in which adults accompanying LEP patients may facilitate communication, and will support the efforts of state and specialty societies to advance the issue at the state level by providing model language for Medicaid Managed Care coverage and other needs as identified by the societies.